

FILED
COURT OF APPEALS
DIVISION II

11 JUL 18 AM 9:40
STATE OF WASHINGTON
BY
DEPUTY

42366-9

NO.

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

In re the Personal Restraint of

ROBERT MARK DOBYNS,

Petitioner.

PERSONAL RESTRAINT PETITION

ROBERT M. QUILLIAN
ATTORNEY FOR PETITIONER
WSBA NO. 6836

2633-A Parkmont Lane SW
Olympia, WA 98502
(360)352-0166

A. STATUS OF PETITIONER

ROBERT MARK DOBYNS applies for relief from the Judgment and Sentence of the Lewis County Superior Court.

By Amended Information filed on June 13, 2008, the Petitioner was charged in Lewis County Superior Court with three count of Rape of a Child in the First Degree, two counts of Child Molestation in the First Degree, and five counts of Rape of a child in the Second Degree. Each of the ten counts had several alleged aggravating factors as well. The charges stemmed from allegations involving the same alleged victim, N.M., the adopted daughter of the Petitioner's former girlfriend.

The case proceeded to a three-day jury trial in Lewis County Superior Court on June 23-25, 2008. Petitioner ROBERT MARK DOBYNS was represented by attorney Don A. McConnell. The State was represented by Deputy Prosecuting Attorney Colin Hayes. At the conclusion of the trial, the jury found the Petitioner guilty as charged on all counts. The Petitioner was sentenced on October 31, 2008. A copy of the Judgment and Sentence is attached hereto as Exhibit A.

The Petitioner filed a timely direct appeal to the Court of Appeals of the State of Washington, Division II, which was heard under case number 38550-3-II. That appeal, which raised issues concerning evidentiary and suppression of evidence rulings, closed courtroom, jury selection, the trial court's treatment of defense counsel in front of the jury, prosecutorial misconduct, and improper jury instructions regarding aggravating factors, was denied by the Court of Appeals in an Opinion dated June 7, 2010. The Court of Appeals' Mandate was issued on July 16, 2010.

The Petitioner has not filed any other petition with this court or with any other

court with regard to the Judgment and Sentence of the Lewis County Superior Court.

B. STATEMENT OF GROUNDS FOR RELIEF

**(NOTE: PORTIONS OF THE RECORD ARE NOT INCLUDED HEREIN,
DUE TO THE DEFENSE MOTION, FILED CONCURRENTLY HEREWITH,
THAT THE PREVIOUSLY PROVIDED REPORT OF PROCEEDINGS IN THE
DIRECT APPEAL BE UTILIZED AS THE REPORT OF PROCEEDINGS IN
THIS PERSONAL RESTRAINT MATTER AS WELL.)**

INEFFECTIVE ASSISTANCE OF COUNSEL

It is submitted by the Petitioner herein that he was denied his constitutional right to due process and a fair trial due to the failure of his counsel to provide him with effective assistance of counsel at trial.

A criminal defendant claiming ineffective assistance of counsel must prove (1) that the attorney's performance was deficient, i.e. that the representation fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that prejudice resulted from the deficient performance, i.e. that there is a reasonable probability that, but for the attorney's unprofessional errors, the result of the proceeding would have been different. *State v. Early*, 70 Wn. App. 452, 460, 853 P. 12d 964 (1993), review denied, 123 Wn. 2d 1004 (1994); *State v. Graham*, 78 Wn. App. 44, 56, 896 P. 2d 704 (1995). Competency of counsel is determined based on the entire record below. *State v. White*, 81 Wn. 2d 223, 225, 500 P. 2d 1242 (1972) (citing *State v. Gilmore*, 76 Wn. 2d 293, 456 P. 2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on one prong. *State v. Tarica*, 59

Wn. App. 368, 374, 798 P. 2d 296 (1990).

Utilizing the above principles, it is the position of the Petitioner herein that his counsel provided ineffective assistance of counsel in several ways, as follows:

Issues Concerning Computers and Computer Images

There was much discussion and testimony in the case of allegations that Dobyns viewed pornographic images in the home computer while with N.M., and that some of the inappropriate touching and conduct occurred while N.M. was sitting in Dobyns' lap during the viewing sessions. When this testimony from N.M. arose (at RP 215), defense counsel immediately objected and asked for a discussion outside the presence of the jury:

Your Honor, I'm going to object to this. In fact, in the police statements, I have never been supplied with anything about any computers whatsoever except for the fact of supposedly there was a pop-up. This individual has stated it was not pornographic. I've never been supplied with anything about a computer. As part of their discovery the police officer found out where this computer was, to my knowledge never went and got it, never checked it. I received nothing. Now for this individual to sit up here and act like there was something that was pornographic on a computer when they didn't go get this computer, and if they did they didn't find anything or I'd have had it.

I'm going to ask for a mistrial at this point because the jury's already heard this and that puts him in the position of being like a child porn person. And we have been supplied with no information that they ever even checked that computer, even though they said they were going to go get it.

There are two troublesome aspects to counsel's performance in this area. First, it demonstrates a remarkable deficiency in defense counsel's knowledge of the state of the discovery in the case. In response to defense counsel's strenuous objection, the Deputy

Prosecutor indicated that the police report did indeed contain references from N.M. that pornographic images were viewed on the computer by herself and Dobyns. The following colloquy then took place, at RP 217-219:

THE COURT: Mr. McConnell, was that in the police report?

MR. MCCONNELL: In the police report she said things came up but never the use of the pornographic from her, never. As a matter of fact, she denied it.

MR. HAYES: Well, there's a distinction. She denied him looking at pornographic sites per se, simply that there were images -- I believe the police reports indicate there were images that came up in the pop-ups. But you're right, she never said he went to any specific sites to look at it.

MR. MCCONNELL: She denied it and you know that --

THE COURT: Well, Mr. McConnell, Mr. McConnell, make your arguments to me.

MR. MCCONNELL: If he's read the reports, he knows she said no pornographic. Now, I can't make it any different than that. It's in the -- it's in the police reports.

THE COURT: Take a look at the reports, Mr. McConnell -- or Mr. Hayes. What does it say?

MR. HAYES: I'm looking at page 4. "She said that she remembered coming in after swimming and Robert" --

(Interruption by the reporter.)

MR. HAYES: "She said that she remembered coming in after swimming and Robert being at the computer in the living room. He called her over and wanted her to sit on his lap. Nikole remembered that while he was on

the computer every now and then a pornographic" --

(Interruption by the reporter.)

THE COURT: Mr. McConnell, Mr. McConnell, would you step back?

MR. MCCONNELL: I'm sorry. I'm trying to find it myself.

THE COURT: All right. Well, just step back to your table.

MR. HAYES: "Nikole remembered that while he was on the computer every now and then a pornographic photo would pop up and Robert would comment about it, saying it looked nice or not."

MR. MCCONNELL: Is that in the police report?

MR. HAYES: Yes.

MR. MCCONNELL: Or is that her taped statement?

MR. HAYES: That's in the police report.

MR. MCCONNELL: Well, I don't care what's in the police report, Your Honor. This is what I'm saying. They took a 36 or 38-page, 40-page statement --

(Interruption by the reporter.)

MR. MCCONNELL: They took a 36 to 40-page statement from this young lady, Fitzgerald and Buster. In that statement they discussed this. She said no porn. Now --

THE COURT: Mr. McConnell, I'm going to overrule the objection. I'm denying the mistrial. It has been disclosed as part of discovery that there was some sites that came up that were pornographic. That's what was said. You're free to cross-examine as to what you think the -- what she said or what she did not say. But I'm not going to declare a mistrial based on any discovery

violation because it's indicated very clearly that that was disclosed.

The second reason that this deficiency is so troubling is the constant argument, both to the Court and to the jury, that the burden is on the State, and that somehow the burden was on the State to go find the computer and have it analyzed. In this regard, see RP 215-216; RP 338-345; RP 445; RP 685-686. This argument and position of defense counsel seems reflective of his belief that the issue of pornography on the computer was never mentioned in the discovery when in fact, as pointed out above, it was indeed mentioned by N.M. to the police.

While defense counsel continually made the argument that the burden is on the State to produce witnesses and to prove its case, at some point the onus falls on the defense to, in the interests of an aggressive and complete defense, to do proper investigation and witness location/questioning/consultation on the Defendant's behalf. This naturally leads to the next area of discussion.

Failure to Investigate and Consult Experts

As can be seen from the Sworn Declarations of Robert Dobyms and Robert M. Quillian, attached hereto as/Exhibit B), defense counsel in this case was paid over \$100,000 dollars for the trial in this matter, which lasted three days, including jury selection, with but eight witnesses called to testify. While the materials provided to current counsel by prior counsel indicate that some medical records of N.M. were obtained by the defense, there is nothing in those file materials to indicate that any sort of expert witness was ever consulted by defense counsel at all. It is submitted that defense counsel could have, and should have, at the very least, consulted with experts in the

following areas:

A. Computers: As previously pointed out, there was mention in the discovery of pornographic images on the computer being viewed by N.M. and the Defendant. Defense counsel made much of the fact that the police never tried to track down the computer and run tests on it to determine any pornographic content. However, where defense counsel is on notice that there will be testimony that such images existed and were viewed as described by N.M., it seems clear that the duty then shifts to defense counsel to try to locate the computer and conduct defense tests on it to disprove those allegations. There is no evidence that was ever attempted in this case.

B. Medications: It was obviously important to defense counsel that the jury be aware that the Defendant was taking Wellbutrin, and that the jury know the effects of that drug. He attempted to get that evidence in through Mary Modrow, at which time the State lodged an objection. What followed was a colloquy (RP 406-412) where defense counsel indicated his intent to bring in evidence concerning the effects of Wellbutrin through either Ms. Modrow, or through Deputy Fitzgerald, who made references to those effects during her interview with Ms. Modrow. The Court ultimately agreed with the State that neither Ms. Modrow nor Deputy Fitzgerald had the expertise to testify concerning the effect of Wellbutrin. At that point, defense counsel stated, at RP 411-412:

MR. MCCONNELL: Yes, Your Honor. I will be asking -- this is what I'm attempting not to do so we don't have a problem. I will have to ask Officer Fitzgerald what her expertise is because she's the one that made the statement. And I assume I'm going to get an objection too. If, in fact, that's the case, then I need a continuance long enough to go get me a doctor. It's that simple.

Unfortunately, realizing that one needs a defense expert witness during the middle of a three-day trial is too little, too late. While the Defendant was able to testify concerning the effects of Wellbutrin, the testimony of an expert would have been far preferable, and would have gotten independent and objective evidence before the jury on this point.

Medical Issues Concerning N.M.: N.M. testified to countless sexual encounters with the Defendant over a substantial period of time. Based on her testimony, as pointed out by defense counsel, there were some 800-1200 separate incidents. Most of which involved, at least, digital penetration by the Defendant. Defense counsel knew the nature of these allegations from day one, and there are references in the case that this matter had been pending for several years before it came to trial. In his closing, at page 689, defense counsel argued to the jury:

But going through those facts is important. Medical evidence, a colposcope, did she have any trauma, did she have any history of any trauma? They didn't bring it to you. That's their job. I want you to understand it's not my job to bring you anything, nothing. It's their job to convict. Doesn't mean I have to disprove everything they say. It's not my job. It's their job to bring it forward. It's their witnesses. They can give them consents.

At some point, it does become incumbent upon defense counsel to be proactive in the investigation of the defense case. Defense counsel argues that the State should have come forward with medical evidence to support its claims of multiple instances of abuse over a substantial period of time. However, the seeming absence of any attempt by the defense to deal with these claims on a medical level, whether that be simply consulting with a defense expert as to the likelihood of finding evidence of trauma where claims such as

these are being made, or whether it go so far as to request an examination of the alleged victim by a defense expert, is simply deficient, and again falls below a reasonable standard. The issue is not so much that an expert **would** have testified for the defense in a certain way. Rather, the issue is that the defense completely failed, based on the materials provided to current counsel, to even consider or make any attempt to consult with any experts at all.

Failure to Put Tapes Into Evidence

A review of the entire record in this case indicates, without question, the tremendous importance of the two intercepted and recorded telephone conversations between the Petitioner and N.M. in this case. As is often the case with allegations of this nature, the jury's questions come down to issues of credibility, as the alleged victim says the incidents did happen, and the defendant states they did not. There was virtually no physical evidence in this trial which militated one way or the other, and only two witnesses (N.M. and the Defendant Dobyns) had first hand knowledge of the alleged events.

No doubt due to the paucity of physical evidence, and the tremendous passage of time between the alleged incident and the date they were first reported, law enforcement was no doubt left with little evidence to work with, other than N.M.'s statements. Thus, they took the step of obtaining a judicial authorization to record telephone conversations between N.M. and Defendant Dobyns.

The tapes of two recorded conversations were marked as Exhibits 7 and 8, and they were played for the jury. RP 451; RP 178-190, 192-205. There followed extensive

questioning of both N.M. and the Defendant concerning those conversations, and the interpretation of those conversations. The State contended that the conversations were essentially admissions by the Defendant while the Defendant contended that he was shocked at the nature of the conversation, and was more in the "asking question" mode during the conversation, just trying to get to the bottom of what was troubling N.M. and offering to help her.

The importance of these recorded conversations was argued by both counsel in closing arguments to the jury. In fact, defense counsel invited the jury to listen to the tapes three times at least, at pages 684, 692, and at pages 704-705, during his closing argument:

Page 684:

That wasn't Bob's response. You get to take the tape back with you and if you want to play it and listen to it. Now, he can argue all he wants about how he had all kinds of time to think about things, to visualize the answers, to do all that. Not on this tape. I mean, you will be able to see if his testimony is consistent that she was rushing him, asking him questions and he was trying to answer. It's pretty obvious when you listen to it. You'll get to listen to it. He's stammering and stuttering. That's not necessarily because he's guilty about something. He can't get an answer in. So I want you to pay attention to that, if you would.

Page 692:

And that's my question to you, how does a guy disprove, disprove? If he really thought he was going to be able to convince her to say something or to not say something, wouldn't he have said something besides questions? Like I did? What? And that's where I want you to listen to the tape. I took your clothes off? I

want you to listen to the tape because those are questions. Those aren't answers. Those aren't affirmative answers. And I don't care how the State tries to make you believe it. You can listen. That's why you get it.

Some of the answers, "Who are you going to tell?" Does that say I did something wrong? Just "Who are you going to tell?" "Tell what?" He doesn't even know. "Who you going to tell?" "I took your clothes off?" That's a question. It's got a question mark. You get to hear it. "No, no, no, no, no. What, I don't know." Is that an admission of guilt, "no, no, no, I don't know"?

Pages 704-705:

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances. And that's exactly what I want you to do. Because the only evidence you really have here of anything other than her is that recording. And that was him. And take into your understanding the circumstances around what was going on. Listen to the tape. I've listened to it. I want you to listen to it. You heard it once. Listen to whether or not he had time to answer things, whether he was getting pushed, rushed, whether he was stammering, whether he was trying to say no, no, no, no, Nikole, no, no. Listen to it. Just because you may not have responded that way doesn't mean he didn't.

While no doubt realizing the critical importance of these tapes, and while realizing the critical importance of the jury being able to go back into the jury room and listen to the tapes over and over if necessary, to establish the Defendant's frame of mind and intent during these conversations with N.M., defense counsel completely neglected to insure that the actual tapes were admitted as evidence. In fact, they were not, and defense counsels' invitation and urging for the jury to listen to the tapes was illusory. The

following colloquy between the Court and counsel took place **after** closing arguments and **after** the case was submitted to the jury, at RP 720-721:

THE COURT: All right. If I can have counsel come up to look at the instructions and the exhibits. Mr. McConnell, do you agree that the exhibits and instructions are complete?

MR. MCCONNELL: I do, Your Honor.

MR. HAYES: State does as well, Your Honor.

THE COURT: I'll let counsel know I expect I'll get them back, get this information back to the jury --

MR. MCCONNELL: Your Honor, I do have one thing prior to. I assumed that the tapes would be introduced when we discussed what they were, 5 and 6. I move for the admission of them. I assumed they already were.

THE COURT: It's too late now.

MR. MCCONNELL: I thought he had done that. I thought that was the conversation. So I would move for their admission. The tapes -- we kept out the transcripts but the tapes should go back.

THE COURT: Well, they weren't offered and they weren't admitted so they are not going.

MR. MCCONNELL: Can I offer them now?

THE COURT: No, not now.

While it cannot be imagined that the failure to insure that the tapes themselves were admitted was a tactical move by defense counsel, particularly given his vigorous invitation/challenge to the jury, in his closing argument, to listen to them in the jury room, it stands out as a glaring error of omission, and one which clearly falls below a reasonable standard of professionalism. Inviting a jury to examine an exhibit which is

never admitted is clearly ineffective assistance of counsel under any standard.

Cross Examination of Detective Buster

This is perhaps the most egregious example of ineffective assistance of counsel in this case.

As has been pointed out previously, this trial essentially boiled down to one person's word against another, to N.M.'s word versus Robert Dobyns' word. There was little or no physical evidence, and very few exhibits.

During his cross examination of Detective Buster (the only law enforcement officer to testify at the trial, and the lead investigator on the case), defense counsel asked Buster if he had any personal knowledge of what had occurred or not occurred between N.M. and Dobyns (RP 462-463), and Buster stated that he did not have any personal knowledge. That question was certainly appropriate, and is often asked of investigating detectives. However, the inquiry by defense counsel should have ended there, but it did not.

Defense counsel went on to elicit testimony from Buster that he had attended training where he was taught, among other things, to "decipher or attempt to decipher" when people are lying. RP 463. Counsel established that Buster had experienced people lying in court before. RP 464. The following colloquy then took place at RP 464 et seq.:

Q So in this case you have no idea whatsoever whether that was a lie, personal knowledge?

A I've got a pretty good idea.

Q I didn't ask you about an idea. I asked you about personal knowledge.

MR. HAYES: Objection, asked and answered as to his personal knowledge of the case.

THE COURT: Sustained.

MR. MCCONNELL: Can I ask him if he has personal knowledge? I think he's already answered he doesn't.

THE COURT: I believe that's true and that's why the objection was asked and answered which I sustained.

MR. MCCONNELL: Okay. But then I think he said that he has a feeling or a belief and I should be able to go into that.

THE COURT: Ask about that.

Q (By Mr. Hayes) What's your feeling? (NOTE: It would appear from the transcript that this questioning was being conducted by defense counsel McConnell, not Deputy Prosecutor Hayes)

A Regarding?

Q Well, you said you have a feeling.

A Yes, I have -- I have an opinion.

Q Like a gut feeling?

A I'd say it's more than that.

Q Really?

A Yes.

...

Q Now you have a gut feeling?

A I didn't say a gut feeling.

Q Well, you have this intuition?

A I just said I had a pretty good idea.

Q Pretty good idea. What's the pretty good idea?

A Just based on my investigation.

Q What in your investigation told you anything that we haven't heard?

A It's based on evidence that we've heard in court.

Q Is that it?

MR. HAYES: Objection; relevance.

THE COURT: Sustained.

Q (By Mr. McConnell) Is there anything else that we don't know about?

MR. HAYES: Objection; relevance.

THE COURT: Sustained.

Q (By Mr. McConnell) Do you have information we don't know about?

MR. HAYES: Objection; relevance.

THE COURT: Sustained.

Q (By Mr. McConnell) So what you're saying is that you have this feeling from sitting in this chair for the last two days?

MR. HAYES: Objection; relevance.

MR. MCCONNELL: Well, Your Honor, he said it.

THE COURT: I'm going to sustain. Move on to something else, Mr. McConnell.

This entire colloquy and line of questioning accomplished one thing, and one thing only - it gave the jury the opinion of Detective Buster that N.M. was telling the truth, and that Defendant Dobyys was lying and was guilty. One can reach no other conclusion from the questions and answers.

Case law has clearly established that no witness, lay or expert, may testify to his opinion as to the guilt of a defendant, whether by direct statement or inference. *State v. Black*, 109 Wn 2d 336, 348, 745 P. 2d 12 (1987); *State v. Garrison*, 71 Wn. 2d 312, 315, 427 P. 2d 1012 (1967). Additionally, the prejudice is even greater when the testimony comes from a law enforcement officer, as an officer's live testimony may often "carr[y] an 'aura of special reliability and trustworthiness.'" *United States v. Espinoza*, 827 F. 2d 604, 613 (9th Cir. 1987).

The damage to the defense case of this line of questioning, given the lack of other significant evidence at all, is clear and staggering. There was **absolutely no legitimate strategic trial tactic** in pursuing this line of questioning with Det. Buster. It was completely unnecessary, and devastating to the defense case, clearly falling below the objective standard of professionalism.

Prejudice and Cumulative Error

While it is submitted that any one of the areas of ineffective assistance of counsel outlined above would, on its own, give rise to a finding of prejudice and the need for a new trial, it is also submitted that the doctrine of cumulative error is operative in this setting as well, and that the cumulative effect of the errors and omissions of trial counsel, viewed together, create clear prejudice. As the Court of Appeals stated in *State v. Venegas*, 155 Wn. App. 507, 228 P. 3d 813 (2010):

Under the cumulative error doctrine, we may reverse a defendant's conviction when the combined effect of errors during trial effectively denied the defendant her right to a fair trial, even if each error standing alone would be harmless. *State v. Weber*, 159 Wn.2d 252, 279, 149 P.3d 646 (2006); *State v. Hodges*, 118 Wn. App. 668, 673-74, 77 P.3d 375 (2003). The doctrine does not apply where the errors are few and have little or no effect on the trial's outcome. See *Weber*, 159 Wn.2d at 279.

Without Detective Buster's ill-elicited opinion as to the Defendant's guilt, it is quite likely that the jury would not have been able to properly find, beyond a reasonable doubt, that the Defendant had committed the acts described and alleged by the State. Taken together, and viewed as a whole, the deficient performance of trial counsel prejudiced Defendant Dobyns, and he is entitled to relief as a result thereof.

C. CONCLUSION AND PRAYER FOR RELIEF

Based on the arguments set forth herein, this court should grant the Petitioner's Petition and remand his cases for a new trial or, at the very least, for an evidentiary hearing as to the allegations of ineffective assistance of counsel herein.

With regard to the request for an evidentiary hearing, citation is made to the case of *Moore v. United States*, 432 F. 2d 730 (3rd Cir. 1970), which involved an appeal of an order dismissing a post-conviction petition alleging, among other things, ineffective assistance of counsel. The District Court had dismissed the petition without holding an evidentiary hearing in the matter. In reversing and remanding for an evidentiary hearing on the petitioner's claims, the 3rd Circuit stated as follows:

We have no doubt that counsel acted in an effective manner as far as the trial judge was able to observe his conduct. But representation involves more than the courtroom conduct of the advocate. The exercise of the utmost skill during the trial is not enough if counsel

has neglected the necessary investigation and preparation of the case or failed to interview essential witnesses or to arrange for their attendance. Such omissions of course, will rarely be visible on the surface of the trial, and to that extent the impression of a trial judge regarding the skill and ability of counsel will be incomplete.


In the light of petitioner's claim of inadequacy of the preparation for trial as well as of counsel's performance at the trial itself and the seeming confirmation of some of these claims which the record presents, we believe it is not possible to say, as section 2255 requires, that the files conclusively demonstrate that the claims are so unfounded that they may be rejected without an evidentiary hearing.

The order of the district court dismissing the petition, therefore, must be reversed and the case remanded for an evidentiary hearing on the adequacy of the legal services provided to petitioner by the Defendant Association.

For similar reasoning, this matter should, at the very least be remanded for an evidentiary hearing to inquire and explore the actions and decisions of trial counsel as set forth above.

DATED this 16th day of July, 2011.

Respectfully submitted,



ROBERT M. QUILLIAN,
Attorney for Petitioner
WSBA #6836

DECLARATION OF COUNSEL

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated this 16th day of July, 2011.



ROBERT M. QUILLIAN


CERTIFICATE

I certify that I mailed a copy of the Personal Restraint Petition by depositing same in the United States Mail, first class postage prepaid, to the following people at the addresses indicated:

Lewis County Prosecuting Attorney
345 W. Main St., 2nd Floor
Chehalis, WA 98532

Mr. Robert M. Dobyns
#319952
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

DATED this 18th day of July, 2011.



ROBERT M. QUILLIAN, WSBA #6836
Attorney for Petitioner

FILE
COURT OF APPEALS
DIVISION II
11 JUL 18 AM 9:42
STATE OF WASHINGTON
BY
DEPUTY

EXHIBIT A

Judgment & Sentence

Received & Filed
LEWIS COUNTY, WASH
Superior Court

OCT 31 2008

By Kathy A. Brack, Clerk
Deputy

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff,

vs.

ROBERT MARK DOBYNS,
Defendant.

SID:

DOB:

No. 06-1-00148-1

**Felony Judgment and Sentence --
Prison**

☒ RCW 9.94A.712 Prison Confinement
(Sex Offense and Kidnapping of a Minor Offense)
(FJS)

☒ Clerk's Action Required, para 2.1, 4.1, 4.3a,
4.3b, 5.2, 5.3, 5.5 and 5.7

☐ Defendant Used Motor Vehicle

I. Hearing

- 1.1 The court conducted a sentencing hearing on October 31, 2008; the defendant, the defendant's lawyer, Sheryl Gordon McCloud, and the (deputy) prosecuting attorney, Colin P. Hayes, were present.

II. Findings

- 2.1 **Current Offenses:** The defendant is guilty of the following offense, based upon
☐ guilty plea (date) _____ ☒ jury-verdict (date) June 26, 2008 ☐ bench trial (date) _____ as
charged in the Fourth Amended Information:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	Rape of a Child in the First Degree	9A.44.073	FA	On or about and between Aug. 1, 1999, and Sept. 19, 2001
II	Rape of a Child in the First Degree	9A.44.073	FA	On or about and between Aug. 1, 1999, and Sept. 19, 2001
III	Rape of a Child in the First Degree	9A.44.073	FA	On or about and between Aug. 1, 1999, and Sept. 19, 2001

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☒ Additional current offenses are attached in Appendix 2.1a.

☒ The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

The jury returned a special verdict or the court made a special finding with regard to the following:

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2008))*

- ☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.____.
- ☐ The offense was predatory as to Count _____. RCW 9.94A.836.
- ☐ The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- ☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- ☐ The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- ☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- ☐ Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ Count _____ is a **criminal street gang-related felony** offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. Laws of 2008, ch. 276, § 302.
- ☐ Count _____ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang member** or associate when the defendant committed the crime. RCW 9.94A.545.
- ☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- ☐ Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch. 219 § 2.
- ☐ Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607. ☐ The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- ☐ Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- ☐ **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	Crime	Cause Number	Court (county & state)
1.			
2.			

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (county & state)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>
1						
2						
3						
4						
5						

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
I	27	XII	Min. of 240-318 months and max. of life	N/A	Min. of 240-318 months and max. of life	Life
II	27	XII	Min. of 240-318 months and max. of life	N/A	Min. of 240-318 months and max. of life	Life
III III	27	XII	Min. of 240-318 months and max. of life	N/A	Min. of 240-318 months and max. of life	Life

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

☒ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____.

2.4 ☒ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____.

☒ above the standard range for Count(s) I-X _____.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☒ found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☒ did ☐ did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

☒ That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☒ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

240 months on Count I

149 months on Count IV

240 months on Count II

149 months on Count V

240 months on Count III

_____ months on Count _____

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

☐ The confinement time on Count _____ includes _____ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: minimum of 599 months and maximum of life.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Counts I, II, III shall run concurrent with each other but shall

run consecutive to counts IV, V and Counts VI - X; counts IV and V shall run
concurrent to each other but shall run consecutive to all other counts; counts VI - X shall
run concurrently with each other but shall run consecutive to all
but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589. other counts.

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count	VI	minimum term:	<u>210</u>	maximum term:	<u>Life</u>
Count	VII	minimum term:	<u>210</u>	maximum term:	<u>Life</u>
Count	VIII	minimum term:	<u>210</u>	maximum term:	<u>Life</u>
Count	IX	minimum term:	<u>210</u>	maximum term:	<u>Life</u>
Count	X	minimum term:	<u>210</u>	maximum term:	<u>Life</u>

- (c) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:
132 days

- (d) **[] Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Placement or Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.700, .705, and .715)

- (A) The defendant shall be on community placement or community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count I for 36 months; Count II for 36 months; Count III for 36 months;

Count IV for 36 months; Count V for 36 months;

(Sex offenses, only) For count(s) VI-X, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The combined term of community confinement and community custody shall not exceed the maximum statutory sentence.

- (B) DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) The defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) The conditions of community placement or community custody include chemical dependency treatment		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in

community placement or community custody. For sex offenders sentenced under RCW 9.94A.710, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

☒ consume no alcohol.

☐ have no contact with: _____.

☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____.

☒ not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

☐ participate in the following crime-related treatment or counseling services: _____.

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management, and fully comply with all recommended treatment. _____.

☐ comply with the following crime-related prohibitions: _____.

☒ Other conditions: _____.

Defendant shall have no criminal law violations; have law abiding behavior; abide by all conditions and requirements in Appendix H (attached); follow all conditions and requirements of DOC

(C) For sentences imposed under RCW 9.94A.712, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500	Victim assessment	RCW 7.68.035
	\$	Domestic Violence assessment	RCW 10.99.080
CRC	\$	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ 200.00	FRC
		Witness costs \$	WFR
		Sheriff service fees \$ 431.10	SFR/SFS/SFW/WRF
		Jury demand fee \$	JFR
		Extradition costs \$	EXT
		Other \$	
PUB	\$	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ 950.07 ^{TBD}	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD	\$	Drug enforcement fund of	RCW 9.94A.760
NTF/SAD/SDI			

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
RTN/RJN \$ 100.00 DNA collection fee RCW 43.43.7541
\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430
\$ 1,000.00 Lewis County Jail Fee Reimbursement RCW 9.94A.760(2)
\$ _____ Other fines or costs for: _____

RTN/RJN \$ TBD Restitution to: _____
\$ TBD Restitution to: _____
\$ TBD Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ _____ **Total** RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[] is scheduled for _____ (date).

☒ The defendant waives any right to be present at any restitution hearing (sign initials): RND

[] **Restitution** Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

RJN

<u>Name of other defendant</u>	<u>Cause Number</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[X] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25 per month commencing 60 days after entry of this order
RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

☒ The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b[] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____

_____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☒ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact: The defendant shall not have contact with Nikolinka L. Modrow (DOB 9/20/1989) and the immediate family of Nikolinka L. Modrow, including grandparents, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (not to exceed the maximum statutory sentence).

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.6 Other: The conditions of community custody listed in Section 4.2 and Appendix H are incorporated as conditions of this sentence. A violation of these conditions is punishable pursuant to RCW 9.94A.634 regardless of whether the defendant is on community custody at the time of the violation.

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Findings and Order Extending Conditions of Sentence Regarding Counts I - V. Under former RCW 9.94A.120(10)(c) (recodified as RCW 9.94A.715(5)), the Court finds that public safety would be enhanced by the extension of all the conditions imposed in Section 4.2, 4.5, and 4.6 for the maximum allowable sentence as it is classified in chapter 9A.20 RCW for the crimes listed in Counts I-V regardless of the expiration of the offender's term of community custody. The Court hereby orders that the conditions of Section 4.2, Section 4.5, and Section 4.6 of this Judgment and Sentence shall be permanent regarding those Counts. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of former RCW 9.94A.195 (2001 c 10 § 6, effective July 1, 2001, recodified RCW 9.94A.195 to RCW 9.94A.631) and may be punishable as contempt of court as provided for in RCW 7.21.040. The department is not responsible for supervision of the offender's compliance with the conditions after the expiration of the terms of community custody.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court

may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.5 Firearms. You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your

employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

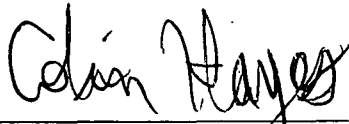
7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

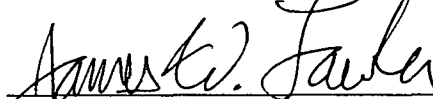
5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.9 Other: Any bond previously posted in this case is hereby exonerated.

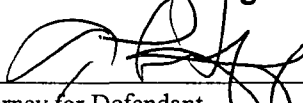
Done in Open Court and in the presence of the defendant this date: 10/31/2008.



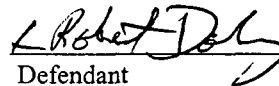
Deputy Prosecuting Attorney
WSBA No. 35387
Colin P. Hayes



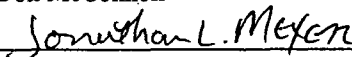
Judge/ James Lawler



Attorney for Defendant
WSBA No. ~~46769~~ 28238
Don McConnell



Defendant
Robert Mark Dobyns



Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) a certificate of

discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140. Termination of monitoring by DOC does not restore my right to vote.

Defendant's signature: Robert Dohy

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

VI. Identification of the Defendant

SID No. _____
(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

Date of Birth 4/26/1957

FBI No. _____

Local ID No. _____

PCN No. _____

Other DOC# 319952

Alias name, DOB: _____

Race:

☐ Asian/Pacific Islander ☐ Black/African-American ☒ Caucasian
☐ Native American ☐ Other: _____

Ethnicity:

☐ Hispanic

☒ Non-Hispanic

Sex:

☒ Male

☐ Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, K Alexander

Dated: 10/31/08

The defendant's signature: Robert Dohy

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2008))

Page 1 of 11

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff,

No. 06-1-00148-1

vs.
ROBERT MARK DOBYNS,
Defendant.

Additional Current Offenses (Appendix 2.1a,
Judgment and Sentence) (APX)

2.1a The defendant has the following additional current offenses:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
IV	Child Molestation in the First Degree	9A.44.083	A	On or about and between Aug. 1, 1999, and Sept. 19, 2001
V	Child Molestation in the First Degree	9A.44.083	A	On or about and between Aug. 1, 1999, and Sept. 19, 2001
VI	Rape of a Child in the Second Degree	9A.44.076	A	On or about and between Sept. 20, 2001, and Dec. 31, 2002
VII	Rape of a Child in the Second Degree	9A.44.076	A	On or about and between Sept. 20, 2001, and Dec. 31, 2002
VIII	Rape of a Child in the Second Degree	9A.44.076	A	On or about and between Sept. 20, 2001, and Dec. 31, 2002
IX	Rape of a Child in the Second Degree	9A.44.076	A	On or about and between Sept. 20, 2001, and Dec. 31, 2002
X	Rape of a Child in the Second Degree	9A.44.076	A	On or about and between Sept. 20, 2001, and Dec. 31, 2002

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Superior Court of Washington
County of

State of Washington, Plaintiff,

No. 06-1-00148-1

vs.

ROBERT MARK DOBYNS,
Defendant.

Additional Current Offense Sentencing Data
(Appendix 2.3, Judgment and Sentence) (APX)

2.3 The additional current offense sentencing data is as follows:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
IV	27	X	Min. of 149 - 198 mo. and max. of life	N/A	Min. of 149 -198 mo. and max. of life	Life
V	27	X	Min. of 149 - 198 mo. and max. of life	N/A	Min. of 149 -198 mo. and max. of life	Life
VI	27	XI	Min. of 210 - 280 mo. and max. of life	N/A	Min. of 210 -280 mo. and max. of life	Life
VII	27	XI	Min. of 210 - 280 mo. and max. of life	N/A	Min. of 210 -280 mo. and max. of life	Life
VIII	27	XI	Min. of 210 - 280 mo. and max. of life	N/A	Min. of 210 -280 mo. and max. of life	Life
IX	27	XI	Min. of 210 - 280 mo. and max. of life	N/A	Min. of 210 -280 mo. and max. of life	Life
X	27	XI	Min. of 210 - 280 mo. and max. of life	N/A	Min. of 210 -280 mo. and max. of life	Life

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. hom. See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

[] See additional sheets for more criminal history and current offense sentencing data.

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff,

vs.
ROBERT MARK DOBYNS,
Defendant.

No. 06-1-00148-1

Findings of Fact and Conclusions of Law for
an Exceptional Sentence
(Appendix 2.4 Judgment and Sentence)
(Optional)
(FNFL)

The court imposes upon the defendant an exceptional sentence [X] above [] within [] below the standard range based upon the following Findings of Fact and Conclusions of Law:

Findings of Fact

I. The exceptional sentences on Counts ~~I-X~~ are justified by the following aggravating circumstances:

(a) The defendant used his position of trust or confidence to facilitate the commission of the crimes.

(b) The offenses were part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

Does Not apply

(c) ~~That, under former RCW 9.94A.535 in effect at the time of the offenses, the defendant's multiple current offenses, combined with his high offender score, would otherwise result in there being no additional penalty for some of his current offenses; the operation of the multiple offense policy of RCW 9.94A.589 would result in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA; this conclusion applies only to the determination of whether the current offenses should be served concurrently or consecutively and is not being applied to adjust for the effect of prior felony convictions on calculation of the presumptive sentence.~~

[X] The grounds listed in the preceding paragraph, taken together or considered individually, constitute sufficient cause to impose the exceptional sentence. This court would impose the same sentence if only one of the grounds listed in the preceding paragraph is valid.

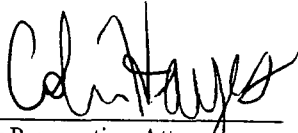
II.

Conclusions of Law

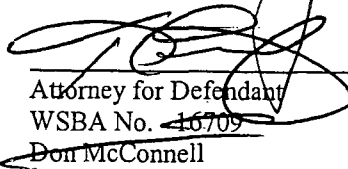
I. There are substantial and compelling reasons to impose an exceptional sentence pursuant to former RCW 9.94A.535 in effect at the time of the commission of the current offense.

II.

Dated: October 31, 2008

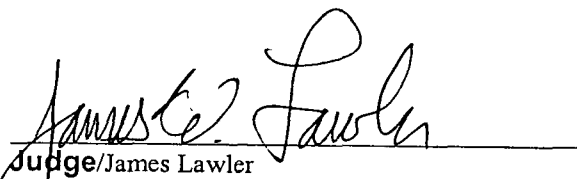
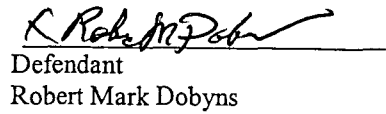


Deputy Prosecuting Attorney
WSBA No.
Colin P. Hayes



Attorney for Defendant
WSBA No. 46709
~~Don McConnell~~

Jonathan L. Meyer


Judge/James Lawler
Defendant
Robert Mark Dobyns

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON]	Cause No.: 06-1-00148-1
]	
Plaintiff]	JUDGEMENT AND SENTENCE (FELONY)
v.]	APPENDIX H
DOBYNS, ROBERT]	COMMUNITY PLACEMENT / CUSTODY
]	
Defendant]	
]	
DOC No. 319952]	

The court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during

06-1-00148-1
DOBYNS, ROBERT 319952
Page 1 of 3

the term of community placement/custody:

- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
- (2) Work at Department of Corrections' approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
- (8) Notify community corrections officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set fourth in writing by the Community Corrections Officer.

WAIVER: The following above-listed mandatory conditions are waived by the Court:

- (b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:

- 1) The defendant shall submit to a sexual deviancy evaluation with a therapist approved by the Community Corrections Officer, and follow all treatment recommendations.
- 2) The defendant shall have no contact with minor aged children without prior approval from the Community Corrections Officer and/or treatment provider.
- 3) The defendant shall hold no position of authority or trust involving minor aged children.
- 4) The defendant shall not enter into any relationship with persons who have minor aged children in their custody or care without prior approval of the Community Corrections Officer and/or treatment provider.
- 5) The defendant shall not possess or view sexually explicit material as defined by RCW 9.68.130, or other materials as deemed inappropriate by treatment provider.
- 6) The defendant shall not use or possess alcohol during the period of community custody.
- 7) The defendant shall have no contact with NLM for LIFE.
- 8) The defendant shall submit to polygraph testing and provide non-deceptive polygraphs at the request of the Community Corrections Officer and/or treatment provider, and the defendant shall submit to plethysmograph testing at the request of the treatment provider.

06-1-00148-1

DOBYNS, ROBERT 319952

Page 2 of 3

9) Must consent to allow home visits by DOC to monitor compliance with supervision. Home visits will include access for purposes of visual inspection of all areas of the residence in which the offender lives or has exclusive or joint control or access.

10/31/08
DATE

James C. Lawler
JUDGE, LEWIS COUNTY SUPERIOR COURT

06-1-00148-1

DOBYNS, ROBERT 319952

Page 3 of 3

EXHIBIT B

Swprn Declarations of Robert Dobyns

and Robert M. Quillian

SWORN DECLARATION OF ROBERT DOBYNS

ROBERT DOBYNS makes the following declaration in accordance with
RCW 9A.72.085:

I was the Defendant in Lewis County Superior Court Cause Number 06-1-00148-1. When charges were filed against me in this matter, I hired Don McConnell, Attorney at Law, to represent me. Mr. McConnell requested a payment of \$60,000 to represent me on these criminal charges. At no time was I ever asked to sign a Fee Agreement of any kind, and there was no Fee Agreement signed by either myself or Ms. McConnell.

My assumption, based on my conversations with Mr. McConnell, was that the \$60,000 fee would be the total fee. There was never any sort of hourly rate quoted to me- just the request for a fee of \$60,000, which I paid to Mr. McConnell up front. I have no idea whether those funds were placed into a Trust Account, or whether they immediately became the property of Mr. McConnell.

As the case wore on, Mr. McConnell, on several occasions, indicated to me that he needed additional attorney's fees. He told me that he would abandon my case and withdraw as my attorney if additional fees were not paid. At no time was I ever provided with any sort of accounting as to how much time Mr. McConnell had spent on my case, or how the prior \$60,000 in fees had been spent. I never received a single billing statement from Mr. McConnell at all.

Due to my fear that Mr. McConnell would abandon my case in mid-stream, at threatened, I paid him additional fees as he requested, and I ultimately paid him a total of \$110,000 for his representation in the trial portion of my case.

After I was convicted, Mr. McConnell said his office would need an additional \$25,000 to represent me on my direct appeal to the Court of Appeals. Since I felt that he knew the case as well as anyone, I paid that sum to him as well. Again, there was no written Fee Agreement of any kind.

Despite several requests, I have yet to receive from Mr. McConnell any accounting for his time, or for how the fees that were paid to him were applied to the work that he did.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Aberdeen, Washington, this 14 day of July, 2011


ROBERT DOBYNS

14 July 2011

Bob,

When I first paid Don, he had me sign an agreement that all it said was that all money paid to him was non-refundable for any reason.

Again, Thank you

Robert M Dabyns

SWORN DECLARATION OF ROBERT M. QUILLIAN

ROBERT M. QUILLIAN makes the following declaration in accordance with RCW 9A.72.085:

I am a duly licensed attorney in the State of Washington, having been admitted to the Bar in 1976.

I have been retained by the family of Robert M. Dobyns, and by Mr. Dobyns himself, to research, investigate, and file a Personal Restraint Petition on his behalf, seeking relief from the Judgment & Sentence entered in Lewis County Superior Court Case Number 06-1-00148-1.

As part of my work on behalf of Mr. Dobyns, I sent letters to trial counsel, Don A. McConnell, requesting, on behalf of Mr. Dobyns, copies of Mr. McConnell's files relative to his representation of Mr. Dobyns. Copies of those letters are attached hereto.

I ultimately received from Mr. McConnell a set of documents, in response to the requests set forth in my letters to him. Those documents contained copies of police reports, pleadings, investigator notes, depositions, appeal documents, and other miscellaneous documents. I received from Mr. McConnell no Fee Agreements signed by Mr. Dobyns, no time sheets, no billing statements, and no accounting of any kind for the time spent on Mr. Dobyns' case by Mr. McConnell, or for fees earned by him in representing Mr. Dobyns.

Additionally, there was no indication, from the documents received, that Mr.

McConnell, or anyone on Mr. Dobyns' behalf, had ever consulted with, or retained, any defense experts in the area of computer analysis, medical issues regarding N.M., or medications being taken by Mr. Dobyns at the time in question.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Olympia, Washington, this 16th day of July, 2011.



ROBERT M. QUILLIAN

Robert M. Quillian

Attorney at Law
2633-A Parkmont Lane SW
Olympia, WA 98502
Telephone: (360) 352-0166
Facsimile: (360) 786-9704
E-mail: qlaw@turbotek.net

February 20, 2011

Mr. Don McConnell
Attorney at Law
207 W. Main St.
Centralia, WA 98531-4245

COPY

Re: State v. Robert M. Dobyns
Lewis County Superior Court No. 06-1-00148-1
Court of Appeals No. 64952-3-I

Dear Don:

As you are aware, I have assumed representation of Mr. Dobyns, and we are currently looking at the possibility of filing post-trial motions on his behalf. Your office provided me, some time ago, with a copy of the CD of the trial transcripts, along with copies of the appeal documents.

After a thorough review of those documents, and meetings with Mr. Dobyns and his family, I am now requesting additional documents from you with regard to Mr. Dobyns' case. Specifically, I am requesting that you provide my office, as quickly as possible, with the following:

1. Copies of your entire trial file, including, but not limited to the discovery materials, investigator notes (if any), meeting notes, etc.

2. A full accounting of fees paid to you by Mr. Dobyns, or anyone on his behalf, to include, at the very minimum:

- A. Copies of any written Fee Agreements pursuant to your representation of Mr. Dobyns, either for trial or for appeal.

- B. A detailed summary of fees paid to your office for both the trial and the appeal, with dates of receipt and amounts.

Mr. Don McConnell
February 20, 2011
Page Two

C. A full accounting of time spent on Mr. Doby's case, either by yourself, your associates/staff, and/or any investigator, broken down into proper increments, showing the date of services rendered and the time spent for each entry.

D. Copies of all billing statements sent to Mr. Doby's, or anyone on his behalf.

All this information is critical to a proper evaluation of Mr. Doby's case, and I'm sure you are aware of the requirements of the Rules of Professional Conduct which mandate your cooperation in aiding subsequent counsel in a given case. As before, I can make arrangements have all these materials picked up at your office in Centralia upon notification that they are available.

I look forward to hearing from you in this regard at your earliest convenience.

Sincerely yours,



ROBERT M. QUILLIAN
RMQ:s

cc: Robert Doby's
Gayle McGee

Robert M. Quillian

Attorney at Law
2633-A Parkmont Lane SW
Olympia, WA 98502
Telephone: (360) 352-0166
Facsimile: (360) 786-9704
E-mail: qlaw@turbotek.net

April 12, 2011

Mr. Don McConnell
Attorney at Law
207 W. Main St.
Centralia, WA 98531-4245

Re. Robert Dobyns

Dear Don:

As you will recall, I wrote to you on February 20, 2011, requesting information relative to your representation of Mr. Dobyns in his Lewis County case that you handled for him (copy of letter enclosed). I understand that you were out of state around that time (as per a message from one of your office staff), but that your Dobyns file would be retrieved, and the requested information furnished immediately upon your return.

Subsequent to that, you and I had a telephone conversation on March 31 regarding my request. It was my understanding, from that conversation, that you would retrieve your file and provide the requested documents, or indicate that you did not have them in your possession, and explain why.

As an aside, I sensed a certain animosity towards me in that conversation, as if I was somehow betraying our friendship (which I acknowledge and value) by making the requests that I have made regarding Mr. Dobyns' case. I assure you there is nothing personal at all in this, Don. I have, as we all have, been subjected to claims and concerns by clients regarding our representation. Quite frankly, I view these inquiries as an opportunity to validate my representation of the client, and I take no offense at all. In fact, just recently, I was contacted by Jeff Ellis, a very good friend of mine, concerning claims by a former client that I failed to raise a diminished capacity by drugs defense for him at trial. I explained my position, backed it up by notes and case law, and the matter was not pursued. Thus, I look on these types of inquiries, which we all get in this profession, as an opportunity to defend myself and educate my client as to exactly what I did on his/her behalf. I have **never** taken such inquiries personally, and I hope you do not take my inquiry in that manner either.

Mr. Don McConnell

April 12, 2011

Page Two

It's now been almost two weeks since our conversation of the 31st, and I have yet to receive any of the requested records/documents/accountings from you on Mr. Dobyns' case. Don't take this the wrong way, but you know your obligations in this regard, and if it were not me asking for this information, it would be another attorney or, worse yet, someone from the Bar Association.

Please give me a quick, written response to this letter, as to when we can expect the information/documents referenced and requested in my February 20 letter. Time is running short for Mr. Dobyns to file any kind of post-conviction motion/pleading, and the information you possess is critical to his ability to proceed.

Thank you very much.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bob", written in dark ink.

ROBERT M. QUILLIAN

RMQ:s